UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-5666 DSF (SHx)		Date	12/17/08
Title	Aussie Pet Mobile, Inc. v. Charles Mayer, et al.			

Present: The Honorable	DALE S. FISCHER, United States District Judge

Debra Plato	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: (In Chambers) Order DENYING Counterdefendants' Motion to Strike (Docket No. 41)

Before the Court is Counterdefendants' motion to strike. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Other than the issues on which Counterclaimants voluntarily dismiss, (see Opp'n at 15-16), the motion is DENIED.[1]

Counterdefendants essentially seek to strike all allegations from the complaint that displease them. This is not the law. Inherent in a fraud claim is that the defendants will be accused of being fraudsters. A court cannot strike allegations simply because the defendant claims that they are untrue. The truth or falsity of the allegations is a matter of evidence, not motion practice.

Some of Counterdefendants' specific arguments merit further comment. Allegations related to other franchisees are relevant because such allegations bear on Counterdefendants' alleged intent to defraud. The characterization of Counterdefendants' business model as a "Turn and Earn" system is not outrageous or unnecessarily inflammatory because they are supported by the factual allegations of the complaint when taken to be true. The Court declines to strike Counterclaimants'

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[1] It is not clear to the Court why the uncontested matters were not resolved during the Rule 7-3 conference.

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damages claim. Based on the information before it, the Court cannot say as a matter of law that Plaintiffs will not recover a sum in the range alleged.

IT IS SO ORDERED.